



Wiley Rein & Fielding LLP

1776 K STREET NW
WASHINGTON, DC 20006
PHONE 202.719.7000
FAX 202.719.7049

Virginia Office
7925 JONES BRANCH DRIVE
SUITE 6200
McLEAN, VA 22102
PHONE 703.905.2800
FAX 703.905.2820

www.wrf.com

January 16, 2006

Helgi C. Walker
202.719.7349
hwalker@wrf.com

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TWB204
Washington, DC 20554

Re: Confidential Verizon Wireless Documents, WT Docket Nos. 05-193, 05-194, Petition For Declaratory Ruling Filed By CTIA Regarding Whether Early Termination Fees Are "Rates Charged" Within 47 U.S.C. Section 332(C)(3)(A).

Dear Ms. Dortch:

Verizon Wireless would like to express its appreciation to the Commission for expeditiously providing the bates numbers of the Verizon Wireless confidential documents that plaintiffs' counsel filed with the FCC.¹ As noted in my January 10, 2006 letter in the above-captioned docket, plaintiffs received such documents pursuant to discovery in a pending California state court litigation against Verizon Wireless and other wireless providers, *In re CellPhone Termination Fee Cases*, J.C.C.P. 4332 (Superior Court of California, County of Alameda). The Judge subsequently modified the protective order to permit plaintiffs to file documents obtain during discovery with the Commission, subject to certain conditions.

Your January 10, 2006 response indicated that, in addition to filing copies of confidential Verizon Wireless documents, plaintiffs also submitted a confidential legal argument that references Verizon Wireless and its confidential documents. In order to respond to any such arguments and in order to protect the confidentiality of the documents cited therein, Verizon Wireless would like to request a copy of such legal argument. Even if the plaintiffs' arguments include confidential information of other carriers who are co-defendants in the litigation, the instant request comports fully with the protective order in the California litigation, which permits outside counsel to view confidential information of other co-defendants.

¹ See Letter from Marlene Dortch, Secretary FCC, to Helgi C. Walker, counsel for Verizon Wireless, WT Docket Nos. 05-193, 05-194 (Jan. 10, 2006).

Ms. Marlene Dortch

January 16, 2006

Page 2

In the alternative, if the Commission has concerns about releasing the documents to Verizon Wireless, Verizon Wireless requests a copy of plaintiffs' legal argument redacted to protect the confidentiality of other carriers, but unredacted in so far as the plaintiffs reference Verizon Wireless.

Verizon Wireless submits that permitting disclosure as outlined above is consistent with Commission's confidentiality regulations, 47 C.F.R. § 0.457(d)(2) & 47 C.F.R. § 0.459(b), as well as the protective order in the California litigation, for the reasons explained below.

First, this request is consistent with the purpose and scope of the Commission's rules implementing the safeguards contained in the Freedom of Information Act ("FOIA").² FOIA permits an administrative agency, such as the FCC, to withhold from public disclosure information that qualifies as "trade secrets and commercial or financial information obtained from a person and privileged or confidential." The purpose of the FOIA exception is "to protect the confidentiality of information which is obtained by the Government . . . but which would customarily not be released to the public."³ Sections 0.457(d) and 0.459(b) of the FCC's rules implement FOIA's confidentiality provisions by permitting parties submitting information to request confidential treatment and have such documents "withheld from public inspection under 5 U.S.C. 552(b)(4) [i]f it is shown that the materials contain trade secrets or commercial [or] financial . . . data which would customarily be guarded from competitors."⁴

Thus, the confidentiality exception in FOIA is designed to encourage entities to provide information to the federal government to facilitate reasoned decision-making. Here, as noted in your January 10, 2006 letter, a third party utilized the discovery process in a private litigation to obtain highly confidential Verizon Wireless's documents and then submitted such documents as well as legal arguments relying upon such documents to the FCC. While the documents and legal brief must be withheld from public inspection—indeed, the judge in the California litigation already has found that the documents are confidential—Verizon

² 5 U.S.C. § 552(b)(4).

³ See *Critical Mass Energy Project v. Nuclear Regulatory Comm'n*, 975 F.2d 871, 872 (D.C. Cir. 1992) (citing Senate Report); 5 U.S.C. § 552(b)(4).

⁴ 47 C.F.R. § 0.457(d)(2).

Ms. Marlene Dortch

January 16, 2006

Page 3

Wireless has a right to review and respond to arguments that attack or otherwise reference Verizon Wireless and its confidential documents.

Second, the protective order in the California litigation place the burden of establishing confidentiality on Verizon Wireless if such designation is questioned. *See* Protective Order (“If the FCC requires a factual showing that any given document is truly confidential, then it may be appropriate to place that burden on the Defendant that originally designated that document as confidential”) (Attachment A). Doing so is impossible if Verizon Wireless does not know what arguments plaintiffs’ have made or how its confidential documents have been used in support of such arguments.

Once again, we appreciate your attention to this matter.

Sincerely yours,

/s/ Helgi C. Walker

Helgi C. Walker

cc: Sam Feder, Acting General Counsel
Matthew Berry, Acting Deputy General Counsel
Joel Kaufman, Deputy Associate General Counsel
Alan R. Plutzik, Counsel for plaintiffs
L. Timothy Fisher, Counsel for plaintiffs
Reed R. Kathrein, Counsel for plaintiffs
Jacqueline E. Mottek, Counsel for plaintiffs
Shana E. Scarlett, Counsel for plaintiffs
Aelish M. Baig, Counsel for plaintiffs
Jennie Lee Anderson, Counsel for plaintiffs
J. David Franklin, Counsel for plaintiffs
Kristin Linsley Myles, Counsel for Verizon Wireless
Patricia Sunar, Verizon Wireless